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CARGILL SALT

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February 28, 2002

Lt. Col. Timothy S. O'Rourke
District Engineer
U.S. Army Corps of Engineers
San Francisco District
333 Market Street, 8th Floor
San Francisco, California 94105

Re: Disclaimer of Jurisdiction for Cargill's Redwood City Plant Site

Dear Lieutenant Colonel O'Rourke:

This is to transmit to you our request for a disclaimer of jurisdiction under the Clean Water Act and the Rivers and Harbors Act for Cargill's Redwood City Plant Site[1] (the "Site"), which consists of the levees and all areas internal to the levees as designated on the map attached hereto as Exhibit A.[2] The lands in question are an industrial plant site continuously used for salt production since 1951.

Industrial Processes Conducted at the Site

The Site can be broken down into two basic process components for communication of information relevant to the Corps' determinations: (1) pre-crystallization areas, and (2) industrial production areas (crystallizer beds, wash ponds, desalting ponds, and bittern ponds).

The pre-crystallization areas at this Site consist solely of pickle ponds leveed off from surrounding areas for the purpose of containing fully saturated brines introduced from off-site concentrator ponds. These fully saturated brines are retained in the pickle ponds until transferred to the crystallizer beds. The pickle ponds are identified on Exhibit A as 7A, 7B, 7C and 8W.

[1] All state lands claims have been resolved; Cargill holds fee simple title to the entirety of the site.

[2] Areas immediately outside the Site's perimeter levees are owned by Cargill and are tidally influenced. Cargill is not seeking a disclaimer of jurisdiction with respect to those portions of this area and does not consider them part of the Site for purposes of this letter.

The industrial production areas include those areas that have common functions relating to the settling of various materials from the brines. These materials include the products manufactured at this industrial facility. Industrial production areas include the crystallizer beds, the wash pond, the desalting pond and the bittern ponds.

The crystallizer beds are a series of man-made, rectangular shaped areas with compacted clay bottoms identified on Exhibit A as 1, 2, 3, 4, 5, 6, 7, 8 and 9. In April of each year, fully saturated brines are transferred to the dry crystallizer beds from the pickle ponds. From April through September, sodium chloride crystals settle out of solution and accumulate on the crystallizer bed floors. Prior to the harvest of these salt crystals from the crystallizer beds, the remaining liquid salt -- a layer of fully saturated liquid known as bittern that contains naturally occurring minerals such as magnesium chloride and magnesium sulfate -- is transferred to one of two places: the Desalting Pond or the Bittern Ponds.

At the Desalting Pond, designated on Exhibit A as 10, additional sodium chloride crystals settle from the bittern. The remaining bittern is then transferred to the Bittern Ponds, which are designated on Exhibit A as 8E, 9A, and 9B. Bittern removed from the crystallizer beds immediately prior to harvest also can be transferred directly to the Bittern Pond, skipping the desalting process.

At the Bittern Ponds, solid salts settle from the liquid salts. The solid salts have largely filled the Bittern Ponds. Bittern solid salts and liquid salts are products that are sold directly from the Site or are further processed at other locations. They are used in a variety of applications, including deicing and dust control.

Harvest of the salt crystals that have settled to the floor of the crystallizer beds is a highly mechanized process that commences in September of each year. An industrial harvester scrapes the salt from the crystallizer bed floors and transfers it to rail cars on a track system that moves as harvest progresses. The rails cars transfer the salt to a dump pit where it is slurried and transferred by pipe to the washer. At the washer, the salt is rinsed with brine to remove muds that were scraped up from the crystallizer bed floors during the harvest process. The washed salt is then transferred to off-site storage.

The "muddy" brine from the salt washing process is then to the Wash Pond where the muds settle out. The Wash Pond is designated on Exhibit A as

Wash Pond. The Wash Pond is a former crystallizer bed that was converted to a settling pond. It is largely filled with the muds that settle from the wash brine.

Following completion of the harvest in December of each year, the crystallizer beds and the Desalting Pond are desalted. This process begins when water is pumped or through hydraulic pressure brought into the Site from First Slough through a water control device. This water control device serves a dual purpose. It both controls water intake as indicated here and, as noted below, serves as the permitted outfall under an NPDES permit that periodically allows discharge of rainwater. At all times other than intake and discharge, the water control device is closed and there is no exchange of liquid between the slough and the Site.

The water that is brought into the Site for desalting purposes is carried in a constructed ditch within the perimeter levees of the Site for distribution to the crystallizer beds and the Desalting Pond. The water dissolves residual salt solids found in the crystallizer beds and the Desalting Pond, and the resulting brine re-enters the salt production process when it is drained to the pre-crystallization system.

Following completion of the desalting process, the dry crystallizer beds undergo mechanized maintenance activities (leveling and compacting the bed floors) in preparation for the next harvest. The salt production process then recommences the following April.

During the December to April time period, it is not unusual for rainwater to accumulate in the crystallizer beds and the Desalting Pond. This water is periodically drained from the crystallizer beds and Desalting Pond to the previously mentioned constructed ditch. The facility holds an NPDES permit authorizing the discharge of this liquid from the ditch (which is the point source) through the water control device (which is the outfall) to First Slough.

The Redwood City Plant Site continuously has been used in this fashion from at least 1951 to the present day.

Acreages of Site Features

Pre-crystallization Areas constitute approximately 475 acres of the approximately 1450 acres that comprise the Site.

Industrial Process Areas constitute approximately 975 acres of the Site, broken down as follows:

Crystallizer beds (including the building site area)	585 acres
Wash Pond:	15 acres
Desalting Pond:	75 acres
Bittern ponds:	300 acres

Approximately 90 acres of the Site consists of (a) levee tops which surround and lie within the Site and (b) land on which Site buildings are located. As noted, the building site acreage is included in the acreage for the crystallizer beds. Cargill, of course, includes these lands within its request for a disclaimer of jurisdiction.

Characteristics and History of the Site

In its original condition, the entire Site was salt marsh. The Corps has long asserted, including in litigation with our predecessor Leslie Salt, that salt marsh surface is above mean high water line[3] and that the mean high water line falls somewhere on the vertical bank at the bayward extent of the marsh.[4] The Corps observes the solid black shoreline feature on Coast Survey charts to represent the outer edge of the marsh or the line of mean high water in South San Francisco Bay. This solid black line reflects the extent of the Corps' jurisdiction under the River and Harbors Act. The Redwood City Plant Site has always

[3] The phrases "mean high water line" and "mean high tide line" are used interchangeably and have the same meaning.

[4] Once the Site was leveed off, certain events have occurred which tended to lower the elevation of its interior. These events include construction activities (compaction) associated with creating the crystallizer bed floors and general subsidence in the South Bay Area due to groundwater draw down. Because the Site was above mean high water when leveed off, the possibility that it subsequently may have become lower than the mean high water line is irrelevant. Due to the presence of the levees, the changes did not result in the Site becoming tidal and in no way extended the mean high water line. If lowering the elevation of an area behind a levee below the mean high water line causes an area to become jurisdictional, then much of the City of San Jose would be jurisdictional.

appeared on the landward side of that solid black shoreline feature, and therefore is not subject to Rivers and Harbors Act jurisdiction.[5]

Historic topographic surveys of the Site demonstrate that Cargill's predecessors completed efforts to levee off areas that comprise the present day Wash Pond, Desalting Pond and substantially all of crystallizer beds sometime between 1897 and 1931. Levees appear landward of the bayward edge of the marsh in USC&GS Charts 5530 (May 1925) and 5531 (December 1917). This area appears completely leveed off by the time USC&GS topographic survey T-4606 was prepared in 1931.[6] Other historical information available to Cargill indicates that this work commenced prior to 1901, the year in which the family-owned Redwood City Salt Works commenced salt production on lands that include the present crystallizer beds.

On January 16, 1940, the War Department issued a permit to Stauffer Chemical Company that authorized the construction of a dam across First Point Slough and construction of a levee along Westpoint Slough. This permit authorized work that would levee off those areas of the marsh that comprise the present pickle ponds, bittern ponds, and portions of the crystallizer beds. In 1941, the Leslie Salt Co. purchased the lands that constitute the Plant Site from Stauffer, and completed construction the dam and perimeter levees authorized by the 1940 permit.

Work internal to the leveed off Site continued through the 1940s to construct the crystallizer beds (excavation, fill, compaction), construct the internal levees (fill) that form the wash pond, the bittern ponds and the pickle ponds, and construct water control and transfer structures. Although some portions of the Site historically were traversed by small tidal sloughs, no permits were required for this work or for the on-going operations that filled the sloughs. Historically, the Corps administratively listed which sloughs in the South Pacific Division are subject to Rivers and Harbors Act jurisdiction.[7] But for those sloughs involved in

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[5] Cargill assumes a set of the historic Coast Surveys that support this statement is available in Corps' files, but can provide them upon request if necessary.
[6] Cargill assumes that these charts and the topographic survey are available in Corps' files, but can provide them upon request if necessary.
[7] These lists were issued by the Office of the Chief of Engineers and include "Listing of Navigable Waters in the South Pacific Division" (April 18, 1932), "Listing of Navigable Waterways" (January 27, 1958), "List of Navigable Waterways of the San Francisco District" (June 30, 1965), and "Listing of Navigable Waterways, San Francisco District" (August 2, 1971). Cargill assumes

the 1940 permit, none of the sloughs that traversed the Site were ever on the Corps' list. Consequently, there was no need for permits for work within the perimeter levees associated with the construction and operation of the Site.

Site work was completed, and the present day boundaries and functions of the Site established, prior to 1951. In that year, the first shipment of bulk salt product was made from the Site. The Site has operated continuously in this fashion from 1951 to the present day.

There are no wetlands at the Site. There is no vegetation present within the pre-crystallization or the industrial process areas, which includes the inboard levees. Although the Site lies within the 100 year flood plain of the Bay on FEMA maps, the perimeter levees effectively eliminate the Site from the flood plain and no flooding has occurred at the Site.

Conclusion

Because the information presented above demonstrates that the Redwood City Plant Site is not presently a water of the United States and was not a water of the United States at the time the Clean Water Act was promulgated, and because it also demonstrates that the Site is not navigable water within the meaning of the Rivers and Harbors Act, Cargill respectfully requests the Corps to issue a disclaimer of jurisdiction.

Thank you for your consideration.

Very truly yours,

Robert C. Douglass

Robert C. Douglass, C.E.
Manager, Real Property

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that these documents are available in Corps' files, but can provide them upon request if necessary.